MOTION FOR SANCTIONS – PRECLUSION OF DEFENSE WITNESS FOR UNTIMELY DISCLOSURE

When the defense did not disclose a witness until one day before the original firm trial date, precluding the witness from testifying is an appropriate sanction for the untimely disclosure.

The State of Arizona, by and through undersigned counsel, moves this Court to impose sanctions upon the defendant, specifically, to preclude the defendant from calling Sid Bradley as a witness, for the reasons stated in the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS:

Trial in this matter was originally scheduled for Wednesday, February 7, 1996; however, as this Court was busy with other matters, the case was set to "ride the calendar" to Monday, February 12, 1996. On February 6, 1996, one day before the original firm trial date and six days prior to the "riding the calendar" date, the defendant filed a Rule 15.2(c) disclosure noticing for the first time a witness named Sid Bradley.

LAW:

A. Preclusion is the appropriate remedy for the discovery violation.

Rule 15, Ariz. R. Crim. P., generally governs discovery in criminal cases. Rule 15.2(b) requires the defense to provide a notice of witnesses within 20 days after arraignment and Rule 15.2(c) requires the defense to submit a notice of all defense witnesses "simultaneously with the notice of defenses submitted under Rule 15.2(b)." The rules require both the State and the defense to make timely discovery to allow both sides to investigate and prepare cases for trial or plea agreement. "The underlying principle of our disclosure rules is the avoidance of undue delay or surprise." *State v. Rienhardt*, 190 Ariz. 579, 486, 951 P.2d 454, 461 (1997), *cert. denied*, 525 U.S. 838

(1998). “Rule 15 is part of a comprehensive system of criminal discovery procedures promulgated to provide defendants with adequate means to discover material evidence and to provide notification to each side of the other's case-in-chief so as to avoid unnecessary delay and surprise at trial.” *Carpenter v. Superior Court*, 176 Ariz. 486, 488, 862 P.2d 246, 248 (App. 1993), citing *State v. Stewart*, 139 Ariz. 50, 59, 676 P.2d 1108, 1117 (1984); *State v. Clark*, 126 Ariz. 428, 432, 616 P.2d 888, 892, *cert. denied, Clark v. Arizona*, 449 U.S. 1067 (1980). The discovery procedures set forth in Rule 15 are “ ‘designed to enhance the search for truth in the criminal trial by insuring both the defendant and the State ample opportunity to investigate certain facts crucial to the determination of guilt or innocence.’ ” *State v. Lawrence*, 112 Ariz. 20, 22-23, 536 P.2d 1038, 1040-41 (1975) (quoting *Wardius v. Oregon*, 412 U.S. 470, 474, 93 S.Ct. 2208, 2211, 37 L.Ed.2d 82 (1973)).

The underlying principle of Rule 15 is “adequate notification to the opposition of one's case-in-chief in return for reciprocal discovery so that undue delay and surprise may be avoided at trial by both sides." *State v. Stewart*, 139 Ariz. 50, 59, 676 P.2d 1108, 1117 (1984), quoting *State v. Lawrence*, 112 Ariz. 20, 22, 536 P.2d 1038, 1040 (1975). “The rule, to be effective, must be applied with equal force to both the prosecution and the defendant.” *State v. Lawrence*, *id*. Discovery is a “two-way street.” *Wardius v. Oregon*, 412 U.S. 470, 475, 93 S.Ct. 2208, 2212, 3 L.Ed 2d 82 (1973). Disclosure of a witness at this late date is untimely. Sid Bradley is an investigator for the Maricopa County Public Defender’s Office and will not be testifying about any newly-discovered evidence. The State has been denied effective discovery.

Rule 15.7, Ariz. R. Crim. P., allows the trial court to impose sanctions for discovery violations. Generally, “the court may impose any sanction it finds just under the circumstances.” Rule 15.7(a), Ariz. R. Crim. P. The decision whether to impose a sanction for a violation of the discovery rules is within the trial court's discretion, and it will not be disturbed unless the defendant can show prejudice. Moreover, the court has broad discretion to determine the nature of any sanction. *State v. DeCamp*, 197 Ariz. 36, 40 ¶22, 3 P.3d 956, 961(App. 1999); *State v. Dumaine,* 162 Ariz. 392, 406, 783 P.2d 1184, 1198 (1989); *State v. Delgado*, 174 Ariz. 252, 256, 848 P.2d 337, 341 (App. 1993). An appropriate sanction “should have a minimal effect on the evidence and merits of the case.” *State v. Towery,* 186 Ariz. 168, 186, 920 P.2d 290, 308 (1996).

In this case, the defendant disclosed this witness only one day before the firm trial date. In the interest and spirit of the strict time limits imposed by Rule 8, the State requests that this Court order the sanction of preclusion rather than granting a continuance. The State is entitled to time to interview the defendant's witnesses and investigate the noticed defenses even if they are disclosed by order of the Court after they are past due. Thus, ordering late disclosure of overdue discovery matters will only result in the same delay as a continuance. The appropriate remedy is for this Court to preclude the defense from calling this undisclosed witness. Preclusion will ensure that this Court can enforce the spirit and purpose of Rule 8, namely, to expedite criminal trials and force both the State and the defense to proceed to trial without the long delays that were possible before Rule 8 was implemented. See *Schultz v. Peterson*, 22 Ariz. App. 205, 207, 526 P.2d 412, 414 (App. 1974).

CONCLUSION:

For the foregoing reasons, the State of Arizona moves this court to impose sanctions upon the defendant, specifically, to preclude the defense from presenting any testimony by Sid Bradley.